

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2006-1813-PST-E   **TCEQ ID:** RN100814458   **CASE NO.:** 31790  
**RESPONDENT NAME:** Flying J Inc. dba Flying J C Store

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Flying J C Store, 1301 Horizon Boulevard, El Paso, El Paso County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 16, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>     <b>TCEQ Attorney/SEP Coordinator:</b> None     <b>TCEQ Enforcement Coordinator:</b> Ms. Shontay Wilcher, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-2136; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468     <b>Respondent:</b> Mr. Jeff Larson, Director, Health, Safety, and Environment, Flying J Inc., 1301 Horizon Boulevard, El Paso, Texas 79928     Mr. Phillip Adams, President and Registered Agent, Flying J Inc., P.O. Box 150310, Ogden, Utah 84415     <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 22, 2006</p> <p><b>Date of NOE Relating to this Case:</b> October 2, 2006 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation. Three violations were documented.</p> <p><b>WASTE</b></p> <p>1) Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the underground storage tank (UST) registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>2) Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not updated to reflect the type of release detection method being used for the UST system at the Facility [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>3) Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ. Specifically, the inventory control records were not available for immediate review [30 TEX. ADMIN. CODE § 334.10(b)].</p>	<p><b>Total Assessed:</b> \$5,457</p> <p><b>Total Deferred:</b> \$1,091 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$4,366</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>1) The Executive Director recognizes that Flying J has implemented the following corrective measures at the Facility:</p> <p>a. Marked the top of each fill tube of each UST on September 26, 2006; and</p> <p>b. Began maintaining UST records on September 26, 2006.</p> <p><b>Ordering Provisions:</b></p> <p>2) The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an amended registration to reflect the current operator information; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 15, 2005

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	9-Oct-2006	<b>Screening</b>	28-Nov-2006	<b>EPA Due</b>	
	<b>PCW</b>	30-Oct-2006				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Flying J Inc. dba Flying J C Store		
<b>Reg. Ent. Ref. No.</b>	RN100814458		
<b>Facility/Site Region</b>	6-El Paso	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	31790	<b>No. of Violations</b>	3	
<b>Docket No.</b>	2006-1813-PST-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Jason Godeaux	
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 7	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$5,100

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 7% Enhancement **Subtotals 2, 3, & 7** \$357

**Notes** Enhancement for two prior NOV's, one with same or similar violations and one without same or similar violations.

**Culpability** No 0% Enhancement **Subtotal 4** \$0

**Notes** The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

**Notes** The respondent does not meet the good faith criteria.

<b>Total EB Amounts</b>	\$5
<b>Approx. Cost of Compliance</b>	\$300

0% Enhancement\*  
\*Capped at the Total EB \$ Amount

**Subtotal 6** \$0

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$5,457

### OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Adjustment** \$0

**Notes**

**Final Penalty Amount** \$5,457

### STATUTORY LIMIT ADJUSTMENT

**Final Assessed Penalty** \$5,457

### DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

20% Reduction **Adjustment** -\$1,091

**Notes**

Deferral offered for expedited settlement.

### PAYABLE PENALTY

\$4,366

Screening Date 28-Nov-2006

Docket No. 2006-1813-PST-E

PCW

Respondent Flying J Inc. dba Flying J C Store

Policy Revision 2 (September 2002)

Case ID No. 31790

PCW Revision February 15, 2005

Reg. Ent. Reference No. RN100814458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jason Godeaux

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for two prior NOVs, one with same or similar violations and one without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

Screening Date 28-Nov-2006

Docket No. 2006-1813-PST-E

PCW

Respondent Flying J Inc. dba Flying J C Store

Policy Revision 2 (September 2002)

Case ID No. 31790

PCW Revision February 15, 2005

Reg. Ent. Reference No. RN100814458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jason Godeaux

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description

Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

35 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the August 22, 2006 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,675

This violation Final Assessed Penalty (adjusted for limits) \$2,675

## Economic Benefit Worksheet

**Respondent** Flying J Inc. dba Flying J C Store  
**Case ID No.** 31790  
**Reg. Ent. Reference No.** RN100814458  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
6.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	22-Aug-2006	26-Sep-2006	0.1	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The Date Required is the date of investigation and the Final Date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

Screening Date 28-Nov-2006

Docket No. 2006-1813-PST-E

PCW

Respondent Flying J Inc. dba Flying J C Store

Policy Revision 2 (September 2002)

Case ID No. 31790

PCW Revision February 15, 2005

Reg. Ent. Reference No. RN100814458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jason Godeaux

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first becomes aware of the change or addition. Specifically, the registration was not updated to reflect the type of release detection method being used for the UST system at the facility.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

99 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the August 22, 2006 investigation date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$2,675

This violation Final Assessed Penalty (adjusted for limits) \$2,675

## Economic Benefit Worksheet

Respondent Flying J Inc. dba Flying J C Store  
 Case ID No. 31790  
 Reg. Ent. Reference No. RN100814458  
 Media Petroleum Storage Tank  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	22-Aug-2006	11-Jul-2007	0.9	\$4		\$4

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TOEQ. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4



Screening Date 28-Nov-2006

Docket No. 2006-1813-PST-E

PCW

Respondent Flying J Inc. dba Flying J C Store

Policy Revision 2 (September 2002)

Case ID No. 31790

PCW Revision February 15, 2005

Reg. Ent. Reference No. RN100814458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jason Godeaux

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

## Violation Description

Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ. Specifically, the inventory control records were not available for immediate review.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$9,900

\$100

## Violation Events

Number of Violation Events 1

35 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$100

One single event is recommended based on documentation of the violation during the August 22, 2006 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$107

This violation Final Assessed Penalty (adjusted for limits) \$107

## Economic Benefit Worksheet

Respondent Flying J Inc. dba Flying J C Store  
 Case ID No. 31790  
 Reg. Ent. Reference No. RN100814458  
 Media Petroleum Storage Tank  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	22-Aug-2006	26-Sep-2006	0.1	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain inventory control records for all USTs. The Date Required is the investigation date and the Final Date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

## Compliance History

Customer/Respondent/Owner-Operator:	CN600241970	Flying J Inc.	Classification: AVERAGE	Rating: 3.02
Regulated Entity:	RN100814458	FLYING J C STORE	Classification: AVERAGE	Site Rating: 1.40
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION		ACCOUNT NUMBER REGISTRATION	EE1111D 36577
Location:	1301 HORIZON BLVD, EL PASO, TX, 79928		Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	October 10, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 10, 2001 to October 10, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jason Godeaux Phone: 512-239-2541

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? CFJ Properties
4. If Yes, who was/were the prior owner(s)? El Paso Interstate Corporation  
Epic Enterprises, Llc
5. When did the change(s) in ownership occur? 08/02/2005

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 11/19/2002 (14724)
- 2 11/30/2005 (437248)
- 3 08/14/2002 (2893)
- 4 04/10/2003 (31919)
- 5 10/03/2006 (514144)
- 6 04/07/2006 (456948)
- 7 10/29/2001 (73775)
- 8 03/13/2002 (73776)
- 9 10/27/2004 (338477)
- 10 11/20/2003 (255153)
- 11 08/03/2004 (281241)
- 12 05/02/2006 (463007)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/05/2006 (463007)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: Failure to conduct monthly inspections that include inspection of the dry breaks.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: Failure to maintain a copy of the CARB order (G-70-150-AE) onsite.

Date: 04/06/2006 (456948)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)  
Description: Facility failed to number their tanks according to their registration/self-certification form.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
Description: Facility failed to amend their UST Registration to indicate the correct release detection method.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 37, SubChapter I 37.875[G]  
Description: The facility failed to have their financial responsibility documentation in the TCEQ format.

F. Environmental audits.  
N/A

G. Type of environmental management systems (EMSs).  
N/A

H. Voluntary on-site compliance assessment dates.  
N/A

I. Participation in a voluntary pollution reduction program.  
N/A

J. Early compliance.  
N/A

Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
FLYING J INC. DBA FLYING J C  
STORE  
RN100814458**

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§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2006-1813-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Flying J Inc. dba Flying J C Store ("Flying J") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Flying J appear before the Commission and together stipulate that:

1. Flying J operates a convenience store with retail sales of gasoline at 1301 Horizon Boulevard in El Paso, El Paso County, Texas (the "Facility").
2. Flying J's five underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Flying J agree that the Commission has jurisdiction to enter this Agreed Order, and that Flying J is subject to the Commission's jurisdiction.
4. Flying J received notice of the violations alleged in Section II ("Allegations") on or about October 7, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Flying J of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Four Hundred Fifty-Seven Dollars (\$5,457) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Flying J has paid Four Thousand Three Hundred Sixty-Six Dollars (\$4,366) of



the administrative penalty and One Thousand Ninety-One Dollars (\$1,091) is deferred contingent upon Flying J's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Flying J fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Flying J to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Flying J have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Flying J has implemented the following corrective measures at the Facility:
  - a. Marked the top of each fill tube of each UST on September 26, 2006; and
  - b. Began maintaining UST records on September 26, 2006.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Flying J has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As operator of the Facility, Flying J is alleged to have:

1. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on August 22, 2006.
2. Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, in violation of





30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on August 22, 2006. Specifically, the registration was not updated to reflect the type of release detection method being used for the UST system at the Facility.

3. Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on August 22, 2006. Specifically, the inventory control records were not available for immediate review.

### **III. DENIALS**

Flying J generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Flying J pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Flying J's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Flying J Inc. dba Flying J C Store, Docket No. 2006-1813-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that Flying J shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, submit an amended registration to reflect the current operator information, in accordance 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC-138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including



photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Flying J. Flying J is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Flying J fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Flying J's failure to comply is not a violation of this Agreed Order. Flying J shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Flying J shall notify the Executive Director within seven days after Flying J becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Flying J shall be made in



writing to the Executive Director. Extensions are not effective until Flying J receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

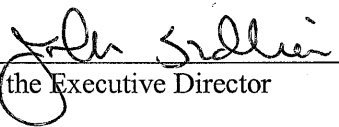
6. This Agreed Order, issued by the Commission, shall not be admissible against Flying J in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Flying J, or three days after the date on which the Commission mails notice of the Order to Flying J, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director


8/9/2007  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

2-12-07  
\_\_\_\_\_  
Date

Jeff Larsen  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Flying J Inc. dba Flying J C Store

Director, Health, Safety and  
\_\_\_\_\_  
Title Environmental

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order

